IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 208 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR MARISON MANILAL CHRISTIAN

Versus

RAJUBHAI MOHANBHAI PATEL

Appearance:

1. First Appeal No. 208 of 2004

MR. UTKARSH JANI for MR BG JANI for Appellant

RULE SERVED for Respondent No. 1-2,3

MR SHASHIKANT S GADE for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 09/12/2004

ORAL JUDGEMENT

Instant Appeal under Section 173 of the Motor Vehicle Act, 1988 ('the Act' for short) is filed by the

appellant ('the Claimant' for short) against the order dated 19.08.2003 rendered below application Exh.3 in MACP No. 89 of 2002 by MACT (Aux.) Court No. 10, City Civil Court, Ahmedabad, by which the application filed by the Claimant under Section 140 of the Act under 'No Fault Liability' principle, claiming compensation of Rs.25000.00 for the injuries caused in the nature of fracture and the disability, which he has received in a vehicular accident occurred on 22.09.2001 with Motor Cycle No. GJ-1-CE-343 at Bapunagar, Ahmedabad came to be rejected.

2. As per the claim put forth by the claimant before the MACT (Aux.), Ahmedabad, as a result of the vehicular accident he sustained fracture of right Humerus supra-condyle and as a result thereof he become disabled to the extent of 24% by way of permanent disability of the upper limbs and 12% of the body as a whole. The claimant has therefore filed MACP No. 89 of 2002 to receive the compensation. In the said application he filed application under Section 140 of the Act (Exh.3) claiming compensation of Rs.25000.00 by way of interim relief under 'No Fault Liability' principle. The Tribunal, on appreciation of the documentary evidence has held that the nature of the injury falls beyond the scope of Section 140 of the Act and hence the application deserves only the fate of rejection and accordingly application was rejected, which has given rise to the present appeal at the instance of the original claimant.

3. Mr. Utkarsh Jani, learned advocate of the appellant states that the provisions of Section 140 of the Act to claim interim compensation under 'No Fault Liability' principle is a benevolent piece of legislation which is required to be decided by way of summary trial and, in order to get the compensation, claimant is required to produce the following documents as per Rule 231 of the Gujarat Motor Vehicle Rules, 1989 ('the Rules' for short):

(i) Injury certificate coupled with disability certificate.

(ii) Injury certificate or Post-mortem report in case of death.

(iii) Registration certificate of the the motor vehicle involved in the accident.

(iv) Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle

against third party risks.

(v) The nature of the treatment given by the medical officer who has treated the victim.

According to him, in the instant case all the documents as envisaged under Rule 231 of the Rules have been produced. Inspite of that, the Tribunal has rejected the claim, therefore the said order is required to be quashed and set aside by allowing the application filed by the claimant under Section 140 of the Act and thereby to award compensation of Rs.25000.00 to the claimant together with interest @ 9% from the date of filing of the application till the amount is deposited in the Tribunal, during the pendency of the claim petition. He, therefore, urged to allow this appeal.

4. In counter submission, Mr. Shashikant S. Gade, learned advocate for respondent No.3 - the Oriental Insurance Co. Limited has contended that the order which is impugned in this appeal do not call for any interference in view of the fact that the nature of injury falls beyond the scope of Section 142 of the Act. Therefore, the Tribunal has very rightly rejected the application. It is, therefore, urged to dismiss the appeal.

5. This Court has given anxious considerate though to the submissions made by the learned advocates appearing for the parties and also perused the averments made in the Memo of the Appeal, impugned order passed by the MACT (Aux.), Ahmedabad and gone through the documents supplied by the learned advocates appearing for the parties during the course of their submissions.

6. At the outset, it may be appreciated that the amount awarded under 'No Fault Liability' principle, that is, under Section 140 of the Act is an interim compensation and obviously it is subject to adjustment against the final award that will be passed in Motor Accident Claim Petition which is still pending before the Tribunal. This principle is established by the Supreme Court in the case of the Oriental Insurance Company Limited v/s Hansarajbhai V. Kodala, 2001 (4) JT, 477.

7. On having perusal of the impugned order it is seen that there is no dispute with regard to the factum of the accident. It can be seen that in support of the application, necessary documentary evidence in the form of a copy of the complaint, panchnama, disability certificate and insurance policy covering the date of

accident are on record. On having perusal of the disability certificate, it is seen that the claimant sustained fracture of right Humerus Supra-condyle for which reduction and A/E plaster was given for one month and Physiotherapy was given for 10 days and according to the opinion of the author of the certificate, i.e. Dr. Upadhyay, who has examined and treated the claimant, claimant received 12% of the disability of the whole body. On the basis of the aforesaid documents there is no manner of doubt that the factum of accident is very much established, it is also established that the claimant has sustained fracture injury resulting into permanent partial disability of his limbs.

8. From sub Rule (5) of Rule 231 of the Rules, it is clear that the summary trial is contemplated for making an award or order under Section 140 of the Act. The defence as presently made by the insurer is obviously an issue in the main petition and it will have to be decided in that petition by leading elaborate evidence.

9. In aforesaid view of the matter, this Court is unable to agree with the findings recorded by the MACT (Aux.), Ahmedabad that the nature of injury falls beyond the scope of Section 142 of the Act. On the contrary, there is voluminous evidence in this regard. Therefore, according to this Court, Insurance Company is liable to pay the amount of compensation to the tune of Rs.25,000.00 to the claimant together with interest @ 9% from the date of filing of this application till the amount is deposited in the Tribunal. Needless to mention that the amount awarded by this order shall be adjusted against the final award that may be passed in the main claim petition which is still pending before the Tribunal.

10. For the foregoing reasons, the appeal succeeds and accordingly it is allowed. Order dated 19.8.2003 recorded below Application Exhibit 3 under Section 140 of the Act in MACP No. 89 of 2002 by the MACT (Aux.), Ahmedabad rejecting the application filed by the claimant in the claim petition is hereby quashed and set aside. The claimant is entitled to recover a sum of Rs. 25,000.00 together with interest @ 9% from the date of filing of this application till the amount is deposited in the Tribunal, as an interim compensation, during the pendency of the claim petition, from respondent No.3, i.e. the Oriental Insurance Company Limited, which is liable to pay the amount of compensation.

11. Mr. Shashikant S. Gade, learned advocate of

Respondent No.3, the Oriental Insurance Company Limited states that the insurance company shall deposit the aforesaid amount within a period of four weeks from today in the MACT (Aux.), Ahmedabad. On the amount being deposited by respondent No.3 - the Oriental Insurance Company Limited in the Tribunal, as stated above, the Tribunal is directed to pass appropriate orders with regard to disbursement and investment of the amount in favour of the claimant.

Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*